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*Washington, Wednesday, August 18, 1937*

## DEPARTMENT OF THE INTERIOR.

### National Bituminous Coal Commission.

[Order No. 36]

AN ORDER PROVIDING FOR A HEARING TO DETERMINE THE NATURE AND EXTENT OF INTRASTATE COMMERCE IN BITUMINOUS COAL IN THE STATE OF MARYLAND AND THE EFFECT OF SUCH COMMERCE UPON INTERSTATE COMMERCE IN SUCH COAL, TO BE HELD AT CUMBERLAND, MARYLAND, ON AUGUST 30, 1937, BEFORE AN EXAMINER, AND NOTICE THEREOF

Pursuant to act of Congress entitled "An Act to regulate interstate commerce in bituminous coal, and for other purposes" (Public, No. 48, 75th Cong., 1st sess.), known as the Bituminous Coal Act of 1937, the National Bituminous Coal Commission, upon being advised by certain producers, producers' organizations, and other interested parties in a public hearing held at the Commission's Hearing Room at Washington, D. C., on the 12th day of July, 1937,<sup>1</sup> that substantially all transactions in bituminous coal in intrastate commerce within the State of Maryland directly affect interstate commerce in such coal and will cause undue and unreasonable advantage, preference or prejudice as between such commerce in Maryland on the one hand and interstate commerce in such coal on the other hand as such interstate commerce is provided to be regulated by the Bituminous Coal Act of 1937, and that a hearing to determine the effect of intrastate transactions in bituminous coal upon interstate transactions in bituminous coal in the State of Maryland would be desirable, and upon investigation hereby orders:

1. That on August 30, 1937, commencing at the hour of ten (10) o'clock A. M., at the Hearing Room of the Commission in the Council Chamber, City Hall, Cumberland, Maryland, a public hearing will be held to determine the nature and extent of intrastate commerce in bituminous coal in the State of Maryland, and the effect of such commerce upon interstate commerce in such coal and to determine what, if any, undue or unreasonable advantage, preference or prejudice, will exist between localities in Maryland in such commerce on the one hand and interstate commerce as regulated by the Bituminous Coal Act of 1937 on the other hand and what, if any, undue, unreasonable or unjust discriminations against interstate commerce in coal have occurred or will occur under the administration of Section 4 of said Act to the end that the Commission may, after hearing, take such action as is necessary to give effect to the Bituminous Coal Code and to the provisions of Section 4-A of said Act.

2. That said hearing will be conducted by an Examiner designated by the Commission.

3. That interested parties may appear and present evidence at such hearing.

4. That any producer believing that particular transactions in intrastate commerce in bituminous coal are not sub-

ject to the provisions of the first paragraph of Section 4-A will, subsequent to the final order of the Commission in the proceeding herein noticed, be afforded full opportunity to file an application for exemption as provided in said section, upon which application a hearing will thereafter be held by the Commission upon proper notice given.

5. That failure of any producer to appear and present evidence at the hearing herein noticed to be held in Cumberland, Maryland, on August 30, 1937, will not prejudice the case of any producer to be heard upon such application.

6. That this order and notice shall not be construed as making any person receiving a copy thereof a party to this proceeding within the provision of Section 6 (b) of the Act.

7. That the Secretary of the Commission shall forthwith mail a copy of this notice to the Consumers' Counsel, to each known producer of bituminous coal in the State of Maryland and to the secretaries of all of the district boards, and shall cause to be published at the expense of the Commission copy of this order and notice for three (3) days in newspapers of general circulation in the counties of Maryland in which bituminous coal is produced.

By order of the Commission.

Dated this 16th day of August, 1937.

[SEAL]

F. WITCHER McCULLOUGH, *Secretary.*

[F. R. Doc. 37-2561; Filed, August 17, 1937; 11:49 a. m.]

[Order No. 37]

AN ORDER PROVIDING FOR A HEARING TO DETERMINE THE NATURE AND EXTENT OF INTRASTATE COMMERCE IN BITUMINOUS COAL IN THE STATE OF PENNSYLVANIA AND THE EFFECT OF SUCH COMMERCE UPON INTERSTATE COMMERCE IN SUCH COAL, TO BE HELD AT JOHNSTOWN, PENNSYLVANIA, ON SEPTEMBER 20, 1937, BEFORE AN EXAMINER, AND NOTICE THEREOF

Pursuant to act of Congress entitled "An Act to regulate interstate commerce in bituminous coal, and for other purposes" (Public, No. 48, 75th Cong., 1st sess.), known as the Bituminous Coal Act of 1937, the National Bituminous Coal Commission, upon being advised by certain producers, producers' organizations, and other interested parties in a public hearing held at the Commission's Hearing Room at Washington, D. C., on the 12th day of July, 1937,<sup>1</sup> that substantially all transactions in bituminous coal in intrastate commerce within the State of Pennsylvania directly affect interstate commerce in such coal and will cause undue and unreasonable advantage, preference or prejudice as between such commerce in Pennsylvania on the one hand and interstate commerce in such coal on the other hand as such interstate commerce is provided to be regulated by the Bituminous Coal Act of 1937, and that a hearing to determine the effect of intrastate transactions in bituminous coal upon interstate transactions in bituminous coal in the

<sup>1</sup> 2 F. R. 1266 (DI).

<sup>1</sup> 2 F. R. 1266 (DI).





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State of Pennsylvania would be desirable, and upon investigation hereby orders:

1. That on September 20, 1937, commencing at the hour of ten (10) o'clock A. M., at the Hearing Room of the Commission in the Fort Stanwix Hotel, Johnstown, Pennsylvania, a public hearing will be held to determine the nature and extent of intrastate commerce in bituminous coal in the State of Pennsylvania, and the effect of such commerce upon interstate commerce in such coal and to determine what, if any, undue or unreasonable advantage, preference or prejudice, will exist between localities in Pennsylvania in such commerce on the one hand and interstate commerce as regulated by the Bituminous Coal Act of 1937 on the other hand and what, if any, undue, unreasonable or unjust discriminations against interstate commerce in coal have occurred or will occur under the administration of Section 4 of said Act to the end that the Commission may, after hearing, take such action as is necessary to give effect to the Bituminous Coal Code and to the provisions of Section 4-A of said Act.

2. That said hearing will be conducted by an Examiner designated by the Commission.

3. That interested parties may appear and present evidence at such hearing.

4. That any producer believing that particular transactions in intrastate commerce in bituminous coal are not

subject to the provisions of the first paragraph of Section 4-A will, subsequent to the final order of the Commission in the proceeding herein noticed, be afforded full opportunity to file an application for exemption as provided in said section, upon which application a hearing will thereafter be held by the Commission upon proper notice given.

5. That failure of any producer to appear and present evidence at the hearing herein noticed to be held in Johnstown, Pennsylvania, on September 20, 1937, will not prejudice the case of any producer to be heard upon such application.

6. That this order and notice shall not be construed as making any person receiving a copy thereof a party to this proceeding within the provision of Section 6 (b) of the Act.

7. That the Secretary of the Commission shall forthwith mail a copy of this notice to the Consumers' Counsel, to each known producer of bituminous coal in the State of Pennsylvania and to the secretaries of all of the district boards, and shall cause to be published at the expense of the Commission copy of this order and notice for three (3) days in newspapers of general circulation in the counties of Pennsylvania in which bituminous coal is produced.

By order of the Commission.

Dated this 16th day of August, 1937.

[SEAL]

F. WITCHER McCULLOUGH, *Secretary*.

[F. R. Doc. 37-2562; Filed, August 17, 1937; 11:49 a. m.]

[Order No. 38]

### AN ORDER APPROVING STANDARDS OF CLASSIFICATION OF COALS, METHODS OF APPLYING SUCH STANDARDS AND RULES OF PROCEDURE IN THE CLASSIFICATION OF COALS UNDER SECTION 4, PART II OF THE ACT, FOR APPLICATION TO ALL DISTRICTS

Pursuant to act of Congress, entitled "An Act to regulate interstate commerce in bituminous coal, and for other purposes" (Public, No. 48, 75th Cong., 1st sess.), known as the Bituminous Coal Act of 1937, the National Bituminous Coal Commission directed all District Boards to propose standards of classification of coals and standard methods and rules of making and applying such classifications, and having held a public hearing at Washington, D. C., on the 15th day of July, 1937,<sup>1</sup> at which hearing evidence was submitted for the purpose of determining and fixing standards of classification, methods and rules in connection therewith, and the Commission having considered all proposals of the District Boards as to such standards of classification and all of the evidence submitted at such public hearing, and being fully advised in the premises, hereby orders that:

All District Boards shall proceed as promptly as possible to propose to the Commission classifications of all coals of code members within their respective districts, which classifications shall be made and proposed to the Commission in conformity with the following standards of classification, methods of applying such standards and rules of procedure, which are hereby adopted and prescribed by the Commission as regulations governing all classifications and reclassifications of coals thereafter proposed to the Commission by any District Board:

#### STANDARDS OF CLASSIFICATION OF COALS, METHODS OF APPLYING SUCH STANDARDS AND RULES OF PROCEDURE IN THE CLASSIFICATION OF COALS

In the classification of coals the following standards, methods and procedure shall be observed and complied with:

##### A—STANDARDS OF CLASSIFICATION

The following factors shall be considered as pertinent and shall be given due consideration:

1. Proximate analyses; namely, moisture, ash, volatile matter, fixed carbon and sulphur, B. t. u.'s, and ash soft-

<sup>1</sup> 2 F. R. 1312, 1367 (DI).



ening temperature, analysis of ash and ultimate analysis of coal.

2. Physical characteristics.
3. Characteristics of performance.

#### B—METHOD OF APPLYING STANDARDS OF CLASSIFICATION

All necessary and ascertainable information concerning the standards set forth above shall be given due consideration with respect to the various kinds, qualities, and sizes of coal mined and shipped by all code members within each district.

All coals shall be classified to the end that no code member will be unduly prejudiced or preferred as between and among code members, and that all classifications established shall be just and equitable, and not unduly prejudicial or preferential, as between and among districts.

Coals shall be classified as of the time and place when preparation for market has been completed by the producer at the mine or at facilities normally considered as an adjunct to the mine.

#### C—RULES OF PROCEDURE IN PROPOSING AND MAKING INITIAL CLASSIFICATIONS

1. Each code member shall submit to the District Board for the district within which his mine or mines are located, on forms supplied by the District Board, within ten (10) days of the date of receipt of such forms, appropriate information concerning the kinds, qualities, and sizes of coal produced by the code member, and all other information deemed pertinent to the standards of classification set forth above, for the purpose of effectuating the classification of coals of the code member.

Such information shall be made available to the Commission upon its request and shall be held confidential by the Commission and the District Board except as it may be required to be disclosed in carrying out the provisions of the Act and the orders of the Commission.

If any code member fails to furnish to the District Board information as required in this Rule, or furnishes information which the District Board deems incomplete, the Board shall use any information or knowledge reasonably available to it concerning the coals produced at the mine or mines of the code member, as pertinent evidence in determining and proposing initial classifications of such coals.

2. Each District Board shall promptly submit to the Commission, and at the same time to all code members within the district, the proposed initial classifications for all coals produced at all mines of code members within the district, such proposals to be made in accordance with the standards and methods hereinbefore set forth.

3. In the event that any code member is dissatisfied with the class or classes in which his coals, or the coals of other code members, have been placed for proposed initial classification, he shall have the right to protest to the District Board. Each protest shall be in writing, addressed to, and filed with, the Secretary of the District Board within ten (10) days after such proposed initial classifications are mailed by the District Board to all code members within the district and shall set forth the classification claimed by such code member together with the reasons why the proposed initial classification should be changed and detailed data in support thereof. The Secretary of the District Board shall fix the time and place for a hearing and shall notify the Commission and all interested code members of such protest and the time and place for hearing the same. The date of the hearing shall be not more than five (5) days after the date of receipt of such protest by the Secretary of the District Board.

4. The District Board, or a committee appointed by it, shall hear the protest at the time and place assigned for hearing and the Board shall render a decision in writing (which shall include the reasons upon which the decision is based) not later than the close of the fifth (5th) day following the conclusion of the hearing.

5. All interested persons appearing at the hearing shall have the right to offer testimony and to file exhibits and

briefs in support of their respective positions. A stenographic record of all testimony offered shall be made and transcribed and shall be permanently retained in the files of the District Board and shall be made available to the Commission upon its request. Expenses in connection with the hearing, except usual expenses of the District Board, shall be assessed in accordance with rules to be proposed by the District Board and approved by the Commission.

6. Notice of the decision of the District Board in any case involving proposed initial classifications shall be given to the Commission and to all code members within the district, except that where a protest is denied and no change in proposed classification is made, the District Board shall be required to notify only the Commission, the protestant, and other parties represented at the hearing. Copies of the decisions of the Board shall be furnished to all principal parties in each case and to the Commission, and shall be made available upon request to all other code members within the district.

#### D—RULES OF PROCEDURE IN MAKING RECLASSIFICATION OF COALS

1. District Boards shall have the right to propose to the Commission the reclassification of any coal of any code member within the district after affording due notice and opportunity to be heard before the District Board of the code member or members affected, as well as to all other code members of the district. Any code member shall have the right to make application to the District Board for a proposal of reclassification but not within ninety (90) days from the date of a previous classification by the Commission unless such code member can produce, to the satisfaction of the District Board, new evidence which was not available at the time the previous classification was proposed by the District Board to the Commission.

2. The rules of procedure for such reclassification of coals shall conform to those outlined in Rules 3, 4, 5, and 6 of Section C and Rule 5 of Section E hereof.

3. Proposed reclassifications shall be promptly submitted by the District Boards to the Commission, together with all pertinent data upon which the proposal of the District Board is based.

#### E—GENERAL CLASSIFICATION RULES

1. All classifications shall become effective upon the issuance of appropriate orders by the Commission, and, pending final disposition of any protest and upon reasonable showing of necessity therefor, the Commission, at the request of the District Board or any interested code member, may make such preliminary or temporary finding or order as in its judgment may be appropriate and not inconsistent with the provisions of the Bituminous Coal Act of 1937.

2. Any code member aggrieved by any action of a District Board concerning the proposed classification or reclassification of coals by a Board may appeal to the Commission, as provided in Section 6, subsection (a) of the Act, by filing a formal protest with the Commission in accordance with its Rules of Practice and Procedure.

3. All code members shall permit the inspection of coal being loaded, and, for the purpose of securing analyses of coal, shall permit the taking of samples at any reasonable time by duly accredited representatives of the District Board or of the Commission. Samples taken shall be representative of a day's loading of the grade and size sampled. Sampling shall be done in accordance with the standards set forth in the Bureau of Mines Technical Paper No. 133, dated 1933, and titled "Directions for Sampling Coal for Shipment or Delivery." Where required by the District Board, three separate samples of coal as shipped shall be taken at the mine or at facilities normally considered as an adjunct to the mine, on three (3) consecutive working days or as nearly thereto as practicable. Each day's sample, in duplicate, shall be forwarded to the laboratory for analysis of each day's sample and three (3) days' composite sample and the code member shall be entitled to receive, upon request, a sufficient portion of said samples for analysis.

4. Sampling for screen tests, both for purposes of determining tolerance and for determining size consist, shall be



done in accordance with "Proposed Tentative Method of Test for Screen Analysis of Coal", A. S. T. M. Designation (D-410-35T), issued 1935.

5. Analyses of coals may be made by any established laboratory recommended by a District Board and approved by the Commission, and in the event of disputes or differences in analytical results of different laboratories, the determinations of the U. S. Bureau of Mines or other impartial laboratories designated by the Commission shall be taken as final.

6. Complete schedules of classifications proposed by each District Board and established by the Commission, as well as revisions thereof, shall be kept on file at the principal office of the District Board and at the office of the Commission at Washington, D. C., subject to inspection by any code member, or other interested party, during usual business hours.

At a date subsequent to this order, the Commission will by further order set a definite date at which time all proposals of initial classifications of coals of code members by District Boards must be completed and filed with the Commission.

The Secretary of the Commission shall forthwith mail copies of this order to the Consumers' Counsel, to the Secretaries of all District Boards, and to all code members within the respective districts.

By order of the Commission.

Dated this 16th day of August, 1937.

[SEAL] F. WITCHER McCULLOUGH, *Secretary*.

[F. R. Doc. 37-2563; Filed, August 17, 1937; 11:49 a. m.]

#### DEPARTMENT OF AGRICULTURE.

##### Agricultural Adjustment Administration.

[Docket No. A-57 O-57]

#### NOTICE OF HEARING WITH RESPECT TO PROPOSED AMENDMENTS TO MARKETING AGREEMENT NO. 62 AND ORDER NO. 1 REGULATING THE HANDLING OF WALNUTS GROWN IN CALIFORNIA, OREGON, AND WASHINGTON

Whereas, under the Agricultural Marketing Agreement Act of 1937, which reenacts and further amends Public No. 10, 73rd Congress, as amended, notice of hearing is required in connection with proposed amendments to a marketing agreement or an order, and the General Regulations, Series A, No. 1, as amended,<sup>1</sup> of the Agricultural Adjustment Ad-

<sup>1</sup> 1 F. R. 155.

ministration, United States Department of Agriculture, provide for notice and opportunity for hearing upon marketing agreements and orders and amendments thereto;

Whereas, the walnut Control Board, established by the order regulating the handling of walnuts grown in the States of California, Oregon, and Washington, has submitted certain amendments to the said marketing agreement and order and requested that a hearing be held on said amendments;

Now, therefore, pursuant to the said act and the said general regulations, notice is hereby given of a public hearing to be held in Room 113, Agricultural Hall, University of California, Berkeley, California, on August 23, 1937, at 11:00 a. m., and thereafter until completed, at which time interested parties will be heard with reference to proposed amendments to the marketing agreement and order regulating the handling of walnuts grown in the States of California, Oregon, and Washington, to be executed and issued under the said act.

This public hearing is for the purpose of receiving evidence as to the necessity for, and the advisability of, amending the said marketing agreement and order so as (1) to fix a salable percentage of walnuts for the crop year, September 1, 1937 to August 31, 1938; (2) to provide the basis of allocating among packers Control Board purchases of merchantable walnuts to replace surplus walnuts sold by other packers who have met their surplus obligation by paying cash to the Control Board in lieu of delivery of walnuts; (3) to change the basis of assessments so that they will be based on the credit value of packers' surplus obligation instead of the basis of handlings of merchantable walnuts; (4) to provide for a varietal tolerance in Oregon-Washington standard or medium Franquette pack; (5) to require that the quality grade of any lot of walnuts shall be the highest quality grade to which such lot is eligible under the quality specifications in the present agreement and order; (6) to omit specific reference to insect-damaged kernels in the tolerance provisions of First and Second Quality Grade for California, Oregon, and Washington walnuts as specified in the present agreement and order. Evidence as to the necessity for and advisability of such other amendments as may be presented at the hearing will be received.

Copies of the proposed amendments to the marketing agreement and order may be inspected in or procured from the office of the Hearing Clerk, Room 0318, South Building, United States Department of Agriculture, Washington, D. C.

[SEAL]

M. L. WILSON,

*Acting Secretary of Agriculture.*

Dated August 17, 1937.

[F. R. Doc. 37-2560; Filed, August 17, 1937; 11:09 a. m.]